

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
HRN Broadcasting, Inc)	EB-06-NF-016
)	
Licensee of Station WZGM)	NAL/Acct. No. 200732640003
Black Mountain, NC)	
Facility ID # 40654)	FRN 0010020162

FORFEITURE ORDER

Adopted: May 2, 2007

Released: May 4, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of eleven thousand two hundred dollars (\$11,200) to HRN Broadcasting, Inc. (“HRN”), licensee of AM broadcast station WZGM in Black Mountain, North Carolina, for willful and repeated violation of Sections 73.1745(a) and 73.3526 of the Commission’s Rules (“Rules”).¹ The noted violations involve HRN’s operation with power other than as specified and made a part of its license and failure to make available a public inspection file.

II. BACKGROUND

2. In response to a complaint that HRN was not reducing its transmitting power during nighttime hours, on February 27 and 28, 2006, an agent of the Commission’s Norfolk Office of the Enforcement Bureau (“Norfolk Office”) made on-scene signal strength measurements of station WZGM’s transmissions in Asheville, North Carolina. The measurements made during the daytime did not change from the measurements made after sunset, so HRN failed to reduce transmitter output power after sunset on both days. On March 1, 2006, the agent made signal strength measurements in the same locations as those made on February 27 and 28, 2006. Immediately thereafter the agent, and the manager of station WZGM, went to the transmitter site and, using the “direct method” of calculating transmitter output power, determined that WZGM was transmitting with 8450 watts. By comparing the measured field strengths with the calculated transmitter output power, the agent demonstrated that HRN transmitted with over 8000 watts of power after sunset on February 27 and 28, 2006.

3. In addition, on March 1, 2006, during normal business hours, the agent visited station WZGM’s main studio location in Asheville, North Carolina and requested to inspect the station’s public inspection file. The station was unable to produce a public inspection file or any of the file’s contents. Station WZGM’s manager admitted that the public inspection file was not at the station’s main studio in Asheville, North Carolina, but was retained at HRN’s home office in Lincolnton, North Carolina.

¹ 47 C.F.R. §§ 73.1745(a), 73.3526.

4. On March 15, 2007, the Norfolk Office issued a *Notice of Apparent Liability for Forfeiture* to HRN in the amount of fourteen thousand dollars (\$14,000), for the apparent willful and repeated violation of Sections 73.1745(a) and 73.3526 of the Rules.² HRN submitted a response to the *NAL* requesting rescission or reduction of the proposed forfeiture.

III. DISCUSSION

5. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining HRN’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

6. Section 73.1745(a) of the Rules states that no broadcast station shall operate at times or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part.⁶ HRN’s station license authorizes operation with 10,000 watts daytime, 77 to 42 watts, from 6:15 p.m. (sunset) to 8:15 p.m. post sunset (PSSA nighttime) and 56 watts nighttime, powers. On February 27 and 28, 2006, station WZGM operated after sunset with over 8000 watts of power. In its response, HRN asserts the violation was not willful because it was due to an equipment malfunction, which was repaired before the agent left the transmitter site.⁷ It is unnecessary for us to conclude that its violation was willful because its violation was repeated. Nevertheless, we also conclude that the violation was willful, because HRN consciously operated its transmitter after sunset. Although HRN’s equipment malfunctioned, there was no evidence at the station that the staff or the chief operator periodically inspected the transmission system or kept a record of malfunctions. Indeed, the station manager stated that the station had no established procedures or schedules for monitoring or calibrating the transmission control system. Therefore, even though HRN may have been unaware that it was operating overpower after sunset, its ignorance is attributable to its failure to conduct periodic complete inspections of the transmitting system and all required monitors to ensure proper station operation.⁸

7. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection, a file containing materials listed in that section.⁹ Section 73.3526(b) of the Rules states that

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732640003 (Enf. Bur., Norfolk Office, March 15, 2007) (“*NAL*”).

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ 47 C.F.R. § 73.1745(a).

⁷ According to the agent’s notes of the inspection, the problem with the transmitter was diagnosed, but not corrected, before he left the transmitter site.

⁸ See 47 C.F.R. § 73.1580.

⁹ 47 C.F.R. § 73.3526(a)(2).

the public inspection file shall be maintained at the main studio of the station.¹⁰ Section 73.3526(c)(1) of the Rules requires that the file shall be available for public inspection at any time during regular business hours.¹¹ During normal business hours on March 1, 2006, in response to a request to inspect the station's public inspection file, station WZGM was unable to make available a public inspection file or any of the required contents of the file. There was no evidence that the station had ever maintained a public inspection file at the main studio. The station manager admitted that the public inspection file had always been kept at HRN's home office in Lincolnton, North Carolina, 73 miles from the community of license.

8. In its response to the *NAL*, HRN does not deny that the violations occurred. Rather, it requests that the forfeitures be rescinded, because it asserts that it promptly corrected the violations. HRN states that the equipment malfunction, which caused the station to operate overpower after sunset, was diagnosed and corrected on the same day as the inspection. HRN also states that within a matter of days after the inspection, the public inspection file was relocated to the main studio. However, HRN's corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹²

9. Based on the information before us, we find that HRN willfully¹³ and repeatedly¹⁴ violated Sections 73.1745(a) and 73.3526 of the Rules by operating after sunset with more power than authorized and failing to make available a public inspection file at the main studio location.

10. HRN also requests a reduction of the forfeiture based on its history of compliance with the Rules. We have reviewed HRN's record and conclude a reduction of the forfeiture to \$11,200 based on history of compliance is appropriate.

11. We have examined HRN's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that HRN willfully and repeatedly violated Sections 73.1745(a) and 73.3526 of the Rules and that a reduction of the proposed forfeiture to \$11,200 is warranted based on HRN's history of compliance with the Rules.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, HRN Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand

¹⁰ 47 C.F.R. § 73.3526(b).

¹¹ 47 C.F.R. § 73.3526(c)(1).

¹² See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁴ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

two hundred dollars (\$11,200) for violations of Sections 73.1745(a) and 73.3526 of the Rules.¹⁵

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁷

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to HRN Broadcasting, Inc. at its address of record and to its counsel, Mark Prak, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, PO Box 1800, Raleigh, NC 27602.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹⁵ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1745(a), 73.3526.

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.